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# ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

## Report on the situation of human rights in Somalia, prepared by the Independent Expert of the Commission on Human Rights, Ms. Mona Rishmawi, pursuant to Commission resolution 1996/57 of 19 April 1996

CONTENTS


| | Paragraphs | Page |
|---|---|---|
| Introduction | 1 - 11 | 2 |
| I. THE CURRENT SITUATION | 12 - 34 | 4 |
| II. THE HUMAN RIGHTS AND HUMANITARIAN SITUATION | 35 - 45 | 7 |
| III. THE SYSTEM OF JUSTICE | 46 - 52 | 11 |
| IV. THE APPLICABLE LAW | 53 - 59 | 12 |
| V. POSSIBILITIES OF PROVIDING TECHNICAL ASSISTANCE | 60 - 73 | 14 |
| VI. VISIT TO HARGEISA | 74 - 84 | 16 |
| VII. CONCLUSIONS AND RECOMMENDATIONS | 85 - 88 | 18 |


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## Introduction

1. The Independent Expert on the situation of human rights in Somalia was appointed by the Secretary-General in accordance with Commission resolution 1993/86 of 10 March 1993.

2. In that resolution, the Commission requested the Secretary-General to appoint for a period of one year a person having wide experience in the field of human rights as an independent expert to assist the Special Representative of the Secretary-General for Somalia through development of a long-term programme of advisory services for re-establishing human rights and the rule of law, including a democratic constitution, as well as the eventual holding of a periodic and genuine election by universal suffrage and secret ballot.

3. The Commission also requested the Secretary-General to give priority to implementing the programme recommended by the Independent Expert, as conditions in Somalia permitted, including through the programme of advisory services of the Centre for Human Rights, in close cooperation with the Special Representative of the Secretary-General, the United Nations peace-keeping operation in Somalia and other United Nations entities, such as the Electoral Assistance Unit, as well as humanitarian and non-governmental organizations.

4. In addition, the Commission urged the Secretary-General to consider recommending the establishment of a unit within the United Nations operation in Somalia to assist in the promotion and protection of human rights and in encouraging respect for humanitarian law, as well as in the implementation of the recommendations of the Independent Expert.

5. Mr. Fanuel Jarirentundu Kozonguizi submitted his first report on the situation of human rights in Somalia to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/77 and Add.1). In resolution 1994/60, the Commission requested the Secretary-General to provide adequate resources to fund the activities of the Independent Expert.

6. At its fifty-first session, on 3 March 1995, the Commission adopted resolution 1995/56 entitled "Assistance to Somalia in the field of human rights", in which it called upon all parties to the conflict in Somalia to work towards a peaceful solution to the crisis. It requested the Independent Expert to study ways and means of how best to implement, at the earliest possible date, a programme of advisory services for Somalia, aimed at re-establishing respect for human rights and the rule of law and strengthening the police and judicial and prison systems in Somalia. It also requested the Secretary-General to report to the Commission at its fifty-second session on the situation of human rights in Somalia and the implementation of its resolution.

7. Following the death of Mr. Jarirentundu Kozonguizi, the Secretary-General, on 31 July 1995, appointed Mr. Mohamed Charfi as Independent Expert on Somalia. In accordance with Commission resolution 1995/56, Mr. Charfi submitted his report on the situation of human rights in Somalia to the fifty-second session of the Commission on Human Rights (E/CN.4/1996/14 and Add.1).

8. On 19 April 1996, the Commission on Human Rights, in its resolution 1996/57, reiterated its previous resolutions and again requested the Secretary-General to provide adequate resources, from within the regular budget of the United Nations, to fund the activities of the Independent Expert and the Centre for Human Rights. It invited Governments and organizations in a position to do so to respond positively to requests by the Secretary-General for assistance in the implementation of the resolution.

9. Following the resignation, for medical reasons, of Mr. Charfi, the Secretary-General appointed Ms. Mona Rishmawi as the Independent Expert on the situation of human rights in Somalia for the purpose of implementing the aforesaid resolution of the Commission on Human Rights.

10. On assuming her mandate, the present Independent Expert had to identify the priority concerns of the international community with regard to the situation of human rights in Somalia. Such concerns are referred to in the resolutions which the Commission on Human Rights has adopted over the past several years but more particularly in its resolution 1996/57. These concerns constitute the substantive content of the Independent Expert's mandate. They may be summarized as follows:

(a) The breakdown of governmental authority in Somalia has exacerbated the grave situation of human rights in the country;

(b) Violations of human rights remain extremely serious, including, in particular, the practice of torture, summary and arbitrary executions, violence against women and children and attacks against humanitarian personnel, and there is no effective judicial system to ensure the right to a fair trial in accordance with international standards;

(c) Attacks, acts of reprisal, abductions and other acts of violence committed against United Nations personnel, personnel of other humanitarian organizations and non-governmental organizations and representatives of the international media in Somalia, sometimes resulting in serious injury or death, have continued.

11. Given the gravity of the concerns highlighted, the mandate remains a most sensitive and difficult one since it relates to a State Member of the United Nations where governmental authority is absent and a State administration non-existent, with the adverse impact this implies on the observance and protection of basic human rights and freedoms. With a view to discharging the mandate in the most effective manner, the Independent Expert, immediately after her nomination, conducted consultations in London and Nairobi and visited Somalia. Keeping in mind the deadline for the submission of her report to the Commission, she visited Somalia from 10 to 13 February 1997, so that she could provide the Commission on Human Rights with an up-to-date assessment of the situation of human rights in that country. The results of her mission will be reflected in section VI of the present report.

## I. THE CURRENT SITUATION

12. When in 1991 the news of famine and civil war in Somalia broke, the international community turned its attention to the country. While the effort to alleviate systematic hunger and starvation was largely successful, the international community failed to restore peace and stability. 1/ Despite the continuing needs in various fields, international interest in the country dropped significantly.

13. Somalia has been almost abandoned and today it rarely features in the international media. Classified as a "collapsed State", Somalia continues to present a serious challenge to the traditional manner in which the international community has dealt with conflict, humanitarian emergencies, rehabilitation opportunities, and human rights promotion and protection.

14. To date, Somalia remains without a central government and at least 30 clan-based and region-based factions are in operation there. Some are specifically identified in this report in Part II on the human rights situation.

15. Assistance to Somalia has been largely linked to the existence of a central authority. The United Nations agencies currently working in Somalia recognize now, however, that this policy is having a devastating impact.

16. In his 17 February 1997 report to the Security Council (S/1997/135), the United Nations Secretary-General indicated that the situation in the country had not witnessed deterioration or improvement during 1996. On 1 August 1996, General Mohammed Farah Aidid died from injuries sustained in fighting in the capital, Mogadishu. His son, Hussien Aidid, succeeded him and Mogadishu remained divided among at least four different groups. Despite attempts by various parties, and the occasional truce, efforts to bring all the warring factions to the negotiation table have yet to succeed.

17. A number of United Nations entities, Governments and non-governmental organizations are attempting to aid Somalia in various fields. In the United Nations Consolidated Inter-Agency Appeal for Somalia for October 1996-December 1997, the United Nations entities describe their understanding of the current security and economic situation in the country. They identify three distinct regional trends: zones experiencing crisis, zones experiencing recovery, and zones experiencing transition from crisis to recovery. 2/

18. The zones experiencing crisis are mainly in the south and are controlled by the faction leaders and other irregular armed forces. While conflict continues mainly in and around Mogadishu, several parts of the country fall outside the factions' control. In the more stable parts, mainly in the north-east, the communities are beginning the immense task of recovery and rehabilitation. They are organizing themselves in a form of local government to provide security, basic services and governance. The self-proclaimed and unrecognized State of Somaliland in the north-west has already entered this phase. Despite some occasional fighting in August 1996, "Somaliland" now

appears stable. The agencies say that the remaining parts of Somalia are undergoing transition from crisis to recovery. While there is a form of political authority that is emerging in the zones in transition, this authority is weak as it is often localized and disputed. 3/

19. There is little international presence inside Somalia. Although various international bodies run some programmes there, the organizations themselves are based in neighbouring countries, mainly in Nairobi, Kenya. Only a skeletal staff is present inside the country. Moreover, owing to kidnappings, banditry and looting, foreigners can move in most of Somalia only if escorted by hired Somali armed guards although some movement is free in some regions such as "Somaliland".

20. Although the political system has collapsed, the social structure remains intact and powerful. The complex social dynamics have led to political and security contradictions that significantly affect the human rights and humanitarian situation in the country. The social structure of the nomadic Somalis is family and clan based. The extended family and the clan are the most powerful political and social structures in the country. The individual is identified by his/her clan membership; the clan plays the major role in his/her protection. Individuals cannot survive without the support of their clan and the system does provide a form of stability. On the one hand, and in the absence of a central authority, the clan elders and other community leaders throughout the country continue to provide most of the day-to-day "governance". On the other hand, it was largely the inter-clan conflict that led to the power struggle and civil war that engulfs Somalia today. In southern Somalia, clan militias and irregular armed forces remain a powerful political force, often independent of clan elders and faction leaders.

21. Another important social factor is the role of custom and religion. Somalia is overwhelmingly Muslim with a small low-profile Christian minority. Religion and custom are interlinked and they play an important social role in the country. The way most women dress in Somalia is representative: women wear long traditional colourful clothes that cover the whole body including the head and neck, but not necessarily the arms.

22. The most frequently used legal structure in the country is traditional justice based on mediation between families. In some parts of the country Shariah courts exist and some regular courts also apply Hudud and Qasas. These courts resort to corporal punishment.

23. In some parts of Somalia, Islamic fundamentalism is growing. Fundamentalist activities led in August 1996 to military hostilities with the Ethiopian forces within the internationally recognized borders of Somalia.

24. Since the main crisis in the country in 1992, the neighbouring countries have hosted a significant number of Somali refugees. There are currently 125,000 refugees in Kenya, 275,000 in Ethiopia and 21,000 in Djibouti. The United Nations High Commissioner for Refugees is planning to repatriate some 100,000 refugees from Ethiopia to north-west Somalia.

25. Somalia also faces a major problem of internally displaced persons. Severe droughts and lack of central planning have led to repeated population

movements. As a result, a number of organizations, including the International Committee of the Red Cross (ICRC), are engaged in innovative programmes to create some economic stability and reduce the potential for mass population movements.

26. As regards forced displacements, it was reported that in November 1996, about 1,000 displaced minority families returned to their farmlands in the Juba valley from Kismayo as part of a joint operation by United Nations agencies. This could be the beginning of the return of a significant number of people who moved from the Juba valley toward the Kenyan border and Kismayo in April and May 1996 due to the combination of insufficient rains and later devastating floods in some areas. No significant movements have been reported since May. In Jilib, a negotiated return of Galjael families who had fled the town due to fighting was reported in late December.

27. Despite some improvement, Somalia's economy remains affected by the general lack of stability in the country. Somalia is mostly a barren land with long coasts on the Gulf of Aden and the Indian Ocean. It has no notable mineral deposits and a weak fishing industry.

28. The country's largest export is beef cattle. The market for beef cattle is limited, however, not only by the resources needed to raise them, but also by periodic outbreaks of disease that sometimes lead to restrictions on imports of cattle by other nations.

29. In the past, Somali ports, including those of Berbara, Bosasso, Kismayo and Mogadishu, brought regular revenue to the country. The Mogadishu port is not currently functioning and some international bodies correctly consider its reopening a priority.

30. The Juba and Shabelle valleys are important agricultural areas. They have the potential to provide the country with some food. These regions are said to largely remain as areas of "complex emergencies" due to fighting and conflict. 4/

31. A food shortage has been reported in many parts of the country. In January 1996, severe hunger was reported in the lower and middle Juba regions of Somalia. The influx of internally displaced to these areas exacerbates the situation. The ICRC, United Nations agencies and NGOs stepped in to deal with the situation. Looting of vehicles carrying food assistance makes it difficult to operate. The ICRC has employed the unusual methods of assistance by building bridges and donating seeds, etc. in an attempt to reduce the population movement and the number of internally displaced.

32. The most vulnerable groups include handicapped and displaced persons. Seven disabled persons were said to have died from starvation in the Martini hospital in south Mogadishu, while others were on the verge of death from starvation. According to reports received by the Independent Expert, at least four displaced persons died from starvation in Belet-Weyne, the capital of Hiran region, in August 1996. The displaced persons in the town have since fled from the Bay and Bakol regions due to fighting.

33. Cholera and diarrhoea are reported in several parts of Somalia. UNICEF helps in the chlorinating and social mobilization activities for the prevention of such diseases. These activities were ongoing during the visit of the Independent Expert. To date, 14 cases of cholera have been confirmed in Mogadishu. No other confirmed cases were reported from the other parts of the country. Cholera task forces with the joint participation of United Nations agencies, NGOs, local authorities and communities have put in place effective public information, sanitation and case management programmes in Somalia.

34. An unusually high incidence of severe cases of malaria was reported in Baki and Borama districts of the Awdal region in the north-west. While malaria is endemic in some parts of southern Somalia, there has been a high incidence in Afgoi and Balad. A decline in malaria cases was reported in the Bay region. United Nations agencies and NGOs work together to control the mosquito which carries the diseases.

## II. THE HUMAN RIGHTS AND HUMANITARIAN SITUATION

35. With the exception of the chapter on Somalia in the United States Department of State Country Report on Human Rights Practices for 1996, no other reports were published during 1996 on the human rights situation in Somalia. In fact the human rights situation in Somalia during 1996 seems to have been deliberately or by omission overlooked by several international bodies operating there. This adds to the importance of the Commission's involvement in this issue.

36. As mentioned, the Independent Expert was appointed only in December 1996, and did not therefore have a chance to fully monitor the human rights situation in Somalia throughout the year.

37. Following is a general overview of the human rights situation in the country based mainly on an analysis of the last six months. Incidents reported by the Somali press and translated by the United Nations Political Office for Somalia (UNPOS) in Nairobi are taken into account as are interviews conducted by the Independent Expert herself and her personal observations. Owing to time constraints, this analysis is far from being complete or comprehensive.

38. Since 1992, regular fighting between militia has been taking place in Somalia. The situation is particularly tense in Mogadishu. As the following reported incidents demonstrate, clashes between the different factions controlling the city continued to take place during 1996, resulting in the death of many civilians and causing the displacement of families to more secure places. The following is an overview of the reports received by the Independent Expert on human rights violations which occurred during the last six months.

Exchange of gunfire and heavy artillery between the militias of Osman Atto and Hussein Aidid was reported in south Mogadishu between 21 and 24 September, during which time a mortar shell landed in a camp for internally displaced persons, killing seven persons and wounding eight others.

On 7 October, at least eight persons were killed and 30 injured during fighting between the forces of Hussein Aidid and Osman Atto near the K-7 intersection in Mogadishu.

On 29 October, 16 persons were reportedly killed and 20 wounded in a drive-by shooting by members of the Osman Atto militia in the Bar Ubah area of south Mogadishu, in retaliation for assassinations on board a boat on 4 October by supporters of Hussein Aidid. The same evening, Hussein Aidid's militia was said to have killed at least five people in the house of a supporter of Osman Atto.

On 30 October, militia loyal to Osman Atto attacked the K-50 airstrip, controlled by the Aidid administration, killing at least 21 civilians and wounding 50 others, in an attempt to kill or kidnap the brother of Hussein Aidid.

In November 1996, heavy shelling and sporadic gunfire caused a number of civilian deaths in south Mogadishu and the temporary closure of schools in the conflict areas. Local press reported 68 deaths (including 18 children) and at least 112 wounded between 1 and 22 November. Mortar shells misfired and hit civilian homes, displaced persons' camps, schools and markets.

On 23 November at least 17 persons were killed in a fight near the milk factory and Afgoye road in south Mogadishu.

Between 13 and 21 December, intense fighting involving forces of Hussein Aidid and those of Osman Atto, supported by Muse Sudi, took place in south Mogadishu and in Medina district. Over 300 persons were reported to have lost their lives in these battles and over 1,400 were wounded. A large number of the reported casualties were civilians. As a result of the fighting, many people fled the Medina district and places as far away as Galcayo reported receiving new displaced families.

On 12 February 1997, fighting erupted in north Mogadishu. Its scale necessitated the evacuation of United Nations personnel from the area. As of 15 February, the fighting had claimed at least 15 lives, five of them are said to be from one family. Forty others were reportedly injured.

39. Nothing is unusual about fighting in Mogadishu. It has been going on since at least 1991, with few interruptions. The significance of the present fighting, however, is that it is not between clans or sub-clans. The power struggle this time is between Sheikh Ali Dere, the demoted head of the Shariah court in north Mogadishu, and Ali Mahdi, the faction leader controlling north Mogadishu, who introduced Shariah courts there. These courts, which operate their own militia, became so powerful in the area that they were able to challenge the authority of one of the main warlords in the country and to take action against its leaders.

40. Although Mogadishu continues to be the most affected town, sporadic fighting continued throughout Somalia.

On 3 January 1996, for instance, the warring sides of the so-called Rahanwein Resistance Army and General Aidid's militia reportedly used heavy machine guns, mortar bombs and anti-tank rockets in the town of Baidoa. The death toll was reportedly high on both sides. Sporadic fighting between the militias of General Morgan and General Aidid continued in and around this agricultural town. An ex-UNICEF local staff was killed in January in Kismayo; he is said to have taken part in the conflict.

A number of clan-related killings reportedly took place at the end of September in the Kismayo area. On 3 September 1996 militia from the Mudulod clan attacked Macashka Adayaga village, located between Balad and Jowhar.

On 25 September, fighting was reported in Dolo town between members of the Somali National Front (SNF) faction and supporters of the Al-Itahad group. The Deputy Chairman of the SNF, Colonel Abdi Nur, was reportedly killed during the fighting. The number of other casualties was not reported.

During the second half of October, fighting was reported between members of the Leysan and Jaron clans, west of Baidoa town, in which 10 villages were destroyed and several persons killed. The fighting caused the displacement of families to Baidoa and the surrounding villages.

On 29 November, a woman was killed in an attack by gunmen on a convoy of farmers' vehicles near Burame village, 23 km north of Jowhar town.

On 30 November, fighting between the forces of Hussein Aidid and Ali Mahdi in the village of Dhabbad led to nine deaths.

41. A number of summary executions and politically motivated assassinations were also reported during 1996.

On 22 September, gunmen assassinated Osam Atto's spokesman in south Mogadishu in his home.

On 4 October, two high-ranking officials of Osman Atto's militia were killed aboard a boat travelling from north Mogadishu to Medina when another vessel loaded with heavy weaponry intercepted the boat and opened fire. The local press reported that the weaponry belonged to the Aidid administration. Nine other person were reportedly injured in the same incident.

On 6 October, a group of "militia police officers" set up an unauthorized roadblock outside Jowhar. An "officer" was killed and three others arrested by local authorities, and now await trial by the Shariah court in Jowhar.

42. International as well as local staff members working for international organizations are working under extreme pressure and there have been several incidents in which United Nations or NGO personnel have been ill-treated, harassed, abducted and threatened by militia allied to Somali faction leaders. Their freedom of movement is severely restricted and foreigners must rely on armed men for their protection.

On 5 April 1996, a European Union delegation encountered clashes at Kismayo airport. A group of militiamen loyal to General Morgan opened fire on the visiting delegation when it attempted to board a car which belonged to the supporters of Mr. Mohammed Hagi Aden, who is one of General Aidid's vice-presidents. The delegation was again ambushed by General Morgan's militiamen on its return to the airport. The militiamen opened fire at Mr. Mohammed Hagi Aden's militiamen who had been escorting the delegation. No one in the delegation was injured.

On 1 September, a driver for an NGO was shot to death outside Berbera, while assisting in vaccination activities.

On 9 September, local people threw stones at a delegation from the UNICEF office for Somalia while it was touring Jamame, Kamsuma, Jilib and Afmadow areas, accusing it of blocking relief assistance previously meant for those areas.

On 10 September, the office of the NGO Action internationale contre la faim-USA in Gardo was looted by one of its own guards and a driver, who also threatened the staff.

In October 1996, a WFP international staff member was assaulted twice by local policemen in the port of Mogadishu, as a result of which the rehabilitation work done in the port by the European Union was suspended. The local authorities later punished the persons involved.

On 28 October, a local UNESCO staff member was killed by a stray bullet in south Mogadishu.

On 22 November, a mortar shell landed in the UNDP compound in south Mogadishu and killed two UNDP guards and two civilians.

On 26 December, a WHO convoy was looted of cholera supplies near the Afgoye area. Following investigation, the Aidid administration apprehended and executed the three men allegedly involved in the incident.

43. Banditry, kidnapping and looting are said to be common in areas other than the self-proclaimed state of "Somaliland". Cases of kidnapping include Mr. Hilaal Aden, a local staff member of the Swedish organization The Life and Peace Institute with whom the Independent Expert met while in Nairobi. He told her that in September 1996, he was abducted from his home in north Mogadishu by six armed men and taken to south Mogadishu where he remained in captivity for a period of six weeks. A relative paid a ransom on his behalf and on 2 November 1996, he was released by his captors in north Mogadishu and was flown to Nairobi. He is currently recovering from a gunshot wound he

received during the kidnapping. Another case of kidnapping involved a WHO staff member who was taken from his home and held in south Mogadishu until ransom was paid on 6 September. A UNICEF staff member was also reportedly kidnapped in south Mogadishu on 28 October and wounded in an escape attempt but later brought to hospital by the kidnappers. On 29 October, an Australian pilot reportedly held by militia loyal to the Aidid administration, a USAID staff member allegedly kidnapped while on mission in north Mogadishu and a staff member of the WHO office in south Mogadishu, Jaylani Sheik, were all released. On 20 November a passenger bus from Jowhar to Bulo Burti was looted by armed militia, who killed three persons and injured several others.

44. The Independent Expert has received reports of several cases of violence and repression of journalists in Somalia committed by the various factions. In 1996, at least three journalists were briefly detained, while others were assaulted or harassed. On 3 September 1996, news correspondent Harun M. Hassan was reportedly attacked by gunmen who accused him of falsely reporting on insecurity in Somalia. On 21 October, journalist Abdullahi Dhere was allegedly badly beaten with sticks in Hargeisa, capital of the self-proclaimed state of Somaliland, after having published an article about a political leader in Somaliland. The attackers, allegedly belonging to his clan, were said to have been driven to the police station, but not to have appeared in court. On 5 January, the Mogadishu office of the newspaper Qaran was reportedly looted of all equipment.

45. The Islamic court has also placed restrictions on journalists. On 29 October, freelance journalist Awil Dahir Salad and correspondent Ali Musa Abdi were reportedly stopped by armed militia men of the Shariah court while driving on main road number 30 in north Mogadishu and told to turn back. In another case, the Islamic court of north Mogadishu reportedly sentenced the editor-in-chief of the weekly Sanca to three months' imprisonment for "publishing false information" and "refusing to reveal his sources", but released him after he had proved that the information he had published was genuine.

## III. THE SYSTEM OF JUSTICE

46. One consequence of the collapse of the central government is the manner justice is rendered in Somalia. There is no centralized national legal or judicial system and each region applies different rules.

47. The most dominant national system of justice is the traditional and customary one. It is based on material compensation for wrong-doings. A person found guilty of murdering a man must pay, for instance, blood compensation of 100 camels (if the victim is a man), or 50 camels (if the victim is a woman). The system, which operates throughout Somalia, is administered by elders within the clan. Compensation is commonly paid by the family or the clan of the offender. Civilian law, where it functions, such as in the area known as Somaliland, recognizes this system of justice and gives the settlement effect apparently in both civil and criminal law procedures.

48. In several parts of the country, the jurisdiction of Shariah courts which, according to the pre-1991 Somali system of justice, was limited to

family matters, was extended to criminal matters. These courts mostly function in north Mogadishu, parts of south Mogadishu, the mid-Shabelle, and parts of Gedo and Hiran regions.

49. These courts deal with cases of murder, theft, adultery, drinking alcohol, apostasy, prostitution and treason. Crimes before the Shariah courts are not limited to these traditicnal Islamic crimes. In January 1996, the council for executing Islamic Shariah law in north Mogadishu reportedly issued directives banning businessmen from exporting contraband goods including minerals, coal and female animals. The statement said that those violating this directive would be brought before the Shariah courts.

50. Shariah courts are administered by individuals either selected by the faction leaders, such as in north Mogadishu, or by the community elders. They are apparently not necessarily Shariah experts. The courts order the swift and immediate enforcement of sentences that range from public lashing, stoning, amputation (although apparently less frequent during last year), and execution. There is no appeal of the decisions of these courts. The court militias enforce the judgements. In January 1996, a significant number of militiamen carrying different kinds of weapons reportedly marched in the streets of the Belet-Weyne district of Hiran region to show their commitment to carrying out the courts' verdicts.

51. The court militias play a role exceeding the enforcement of judgements, however. In February 1996, the Shariah court in north Mogadishu reportedly sent a force of about 200 militiamen to the mid-Shabelle region to restore peace and security there. The force was also expected to restore the activities of the Shariah court in the area. The office of the court had been closed for some time due to a dispute between court officials and the region's administration.

52. The civilian courts function in the Somaliland region. The Somaliland Charter brought law back to the state; it was in on the eve of Siad Barre's takover of the Government in 1969 (see visit to Hargeisa below).

## IV. THE APPLICABLE LAW

53. In the absence of a peaceful settlement, and despite some improvement of the security situation in some regions during the recent months, the Independent Expert considers that the situation within the total territory of Somalia remains governed by international humanitarian rules pertaining to internal armed conflict. She also believes that the military hostilities adjacent to the Ethiopian-Somali border are governed by the rules pertaining to international armed conflict.

54. In determining what constitutes an armed conflict and when humanitarian law applies, it is instructive to examine the position of the International Criminal Tribunal for the Former Yugoslavia:

> "... an armed conflict exists wherever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of

such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory under the control of a party, whether or not actual combat takes place there." 5/

55. Accordingly, and as long as the faction leaders, the militias and other irregular armed forces continue their conflict in Somalia and until a peaceful settlement is reached, international humanitarian law related to internal armed conflict applies in the whole territory of Somalia irrespective of whether the specific area is engulfed in active fighting.

56. All parties to the conflict are, therefore, bound by customary international law related to internal armed conflict. These principles are aimed at protecting the civilian population from hostilities. They prohibit deliberate attacks upon civilians and outlaw indiscriminate attacks. They forbid attacks on non-military objectives and require precautions when attacking military targets.

57. Moreover, the Somali warring factions are bound by article 3 common to the four Geneva Conventions of 12 August 1949. This absolutely binding provision is considered the backbone of humanitarian law pertinent to such situations and lays down the fundamental principles of protection applicable in non-international armed conflict. 6/ It constitutes customary international law 7/ or even jus cogens. 8/ Because of the great significance of this provision in the Somalia context, it is appropriate to recall here of the obligations it imposes. The article states that,

"... each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

"1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

"(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

"(b) Taking of hostages;

"(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

"(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

"(2) The wounded and sick shall be collected and cared for."

58. In addition, the parties in the Somali conflict are obliged not to deliberately impede the delivery of food and medical supplies essential for the survival of the civilian population. In fact, the Security Council in resolution 794 (1992) warned that those who commit or order the commission of such acts in Somalia would be held individually responsible. This is not an empty threat as efforts to establish a permanent International Criminal Court to try the perpetrators of gross violations of human rights and humanitarian law are well under way. 9/

59. These rules form the basis of the human rights and humanitarian situation described above.

## V. POSSIBILITIES OF PROVIDING TECHNICAL ASSISTANCE

60. Peace and stability can no doubt ensure better respect for human rights and humanitarian law. Experience demonstrates, however, that peace is no guarantee of full observance of these principles. If a coherent, non-partisan and less clan-oriented civil society is to emerge in Somalia, the international community must invest at this stage in strengthening the understanding and observance of human rights and humanitarian principles and values.

61. This serious challenge must not be underestimated. There are now several opportunities for providing technical assistance to Somalia in the field of human rights and humanitarian law that could be grasped. A solid programme in the human rights field, even if initially modest, can only advance efforts to restore peace and stability in this much-troubled country.

62. As stated earlier, in terms of stability, Somalia now can be divided into three zones: zones experiencing crisis, zones experiencing recovery, and zones experiencing transition from crisis to recovery. As the Secretary-General observed in his February 1997 report to the Security Council, there are different needs and operating environments in each region, and there is a need to adapt the assistance to these varying needs.

63. The emerging local reconstruction plans, in the form of local authorities in the zones experiencing recovery, are a promising development in bringing about stability and governance. It is essential at this stage that the emerging authorities be introduced to human rights principles, especially in the area of the administration of justice.

64. The experience of the Independent Expert during her visit to Hargeisa (see below) led her to believe that it is possible to conduct an open discussion about how justice can be administered properly. An enlightened discussion on these issues that takes the Somalia-specific conditions into

account can bring about a better appreciation of human rights values. This discussion must be given a full chance and must not be easily dismissed if recovery and rehabilitation are to be enhanced.

65. Opportunities also exist to develop formal and informal educational programmes in schools and elsewhere. The role of the non-governmental sector, and particularly of women's groups, is essential in the dissemination of human rights knowledge.

66. Several programmes already exist, and there is a possibility of building on them. UNICEF, for instance, translated the Convention on the Rights of the Child into Somali and is distributing it throughout Somalia. UNICEF is also undertaking research for the development and design of a children's inter-active workbook, with a teacher/parent guide, based on the Convention. UNICEF also works with schools and women's groups to advance knowledge of the Convention.

67. The ICRC is taking steps to disseminate the principles of humanitarian law and develop practical knowledge to facilitate its relief and rehabilitation work. The ICRC is also cooperating with BBC Somalia, the radio station perceived by Somalis as the most credible, to elaborate programmes on international humanitarian law and their conformity with Somali culture.

68. The United Nations Consolidated Inter-Agency Appeal for Somalia was a welcome effort at coordination within the United Nations system and with NGOs. The Appeal identified "governance" as a clear priority area. This theme was not sufficiently developed, however. There is scope to incorporate human rights training into projects such as administrative training, basic education, gender issues, communication processes, NGO capacity-building and participation in civil governance, militia rehabilitation, and community appraisal of basic needs. The incorporation of a human rights dimension into the governance theme will increase its effectiveness.

69. Several organizations such as Medecins sans frontières and Action contre la faim have practical relief programmes to provide health care and fight hunger and starvation. By providing humanitarian relief, they enhance the possibilities of meaningful human rights work.

70. International NGOs are keen to incorporate human rights into their work. Amnesty International carried out a training programme for Somali NGOs, discussing human rights monitoring and reporting methods, in Nairobi from 28 to 31 October 1996. Oxfam and the Life and Peace Institute expressed interest in programmes to introduce human rights principles to grass-roots organizations.

71. Local NGOs are also emerging in Somalia. Several are keen to incorporate human rights into their work. A number of persons with whom the Independent Expert met mentioned the existence of a human rights organization in north Mogadishu. The security situation, however, prevented the Independent Expert from visiting Mogadishu and therefore this organization.

72. The European Union, acting through the Somali Unit of the European Commission, funds several activities in Somalia. The Independent Expert is encouraged that the Union considers the incorporation of the human rights dimension into the assistance and rehabilitation work in Somalia to be a priority.

73. The existence of the Somalia Aid Coordinating Body (SACB) facilitates the task of the integration. SACB is an ad hoc coordination body based in Nairobi comprising donors, United Nations Agencies, NGOs and other international organizations. The task of this body is "to facilitate the development of a common approach for the allocation of resources available for Somalia and to provide policy and operational coordination for rehabilitation and reconstruction activities in the country". 10/ The Independent Expert is encouraged that the SACB's Code of Conduct for International Rehabilitation and Development Assistance to Somalia, while taking into account local customs and cultural and religious values, is also taking into account international human rights law. In July 1995, a Clarification to the Code deplored "all cruel, inhuman and degrading treatment or punishment associated with the maintenance or promotion of peace and security in Somalia". It went on to state that "in pursuit of peace and security human rights must be observed". 11/

## VI. VISIT TO HARGEISA

74. As indicated in paragraph 10, the Independent Expert undertook a field mission to Somalia. On her way to Somalia, she visited London where she contacted various non-governmental organizations and individuals who provided her with pertinent information on developments in Somalia. She then visited Nairobi where she had consultations with representatives of UNDP, UNPOS, UNICEF, the Somali Unit of the European Commission, the ICRC, non-governmental organizations working in Somalia and with Somalis.

75. While in Nairobi, the Independent Expert pursued the possibility of traveling to Somalia, including to Mogadishu. She was informed by United Nations officials that, for security reasons, a mission to Mogadishu could not take place at that moment. Consequently, the Independent Expert undertook a short visit to Hargeisa, the capital of the self-proclaimed state of Somaliland in the north west of Somalia, where the situation seemed to be stable and less affected by the current Somali civil war.

76. During her visit to Hargeisa, the Independent Expert met with representatives of the local government who extended their cooperation during her stay in the city. She also met with local Somali organizations as well as representatives of the United Nations agencies and international NGOs working in the region.

77. The leaders of "Somaliland" informed the Independent Expert that they had been trying, with some success, to build institutions in that part of the

country and to establish some elements of governance. They had, therefore, embarked on a process of reorganizing the administration and establishing a constitution describing the powers and responsibilities of the newly created legislative, executive and judicial organs of government. The signing of peace agreements between all the clans living in the region had created a need for the rehabilitation of all the militiamen who had fought on their behalf. The Independent Expert was told by the leaders of the local ministry of interior that a training centre for the rehabilitation of militiamen and auxiliary forces had been established with the task of reintegrating 10,000 militia and auxiliary forces into the local police and armed forces.

78. The establishment of a local government and local administrations has helped accelerate the region's recovery from the effects of civil war, but it has also brought new problems and challenges. According to several local independent non-governmental organizations and individuals, the people's desire to see the establishment of a democratic government and of a publicly accountable administration remains unsatisfied. It was reported that on 18 November 1996, a peaceful demonstration denouncing the critical economic situation in the region was abruptly interrupted by the police firing on the crowd. Several persons (24) were subsequently arrested without any warrant. They were beaten while held in detention centres without being taken to court. One person from the group told the Independent Expert that a police officer had informed him that according to an order signed by the minister of interior he had been sentenced to one year's imprisonment; the sentence had been issued without any reference to a judicial process. After a period of two months in detention, all the people arrested were released, but no administrative sanction has been taken against the perpetrators of the violations.

The Criminal Justice System

79. The Charter of Somaliland states that laws enacted prior to the 1969 takeover by Siad Barre are in force. This law is an amalgamation of various legal systems and traditions. The Somali criminal law was based on the Italian code of 1931. The Somali version included some elements of Islamic law and Somali customs. The Somali Code of Criminal Procedure of 1963 was based upon an amalgamation of the Italian Code of Criminal Procedure of 1953, the British Criminal Procedure Ordinance of 1956, and the Indian Evidence Act of 1872. The civil laws are based on Egyptian civil law.

80. It is essential that the courts receive international attention and assistance. The Independent Expert visited the Supreme Court in Hargeisa and met with the Chief Justice. The court registry indicates that the Court is in operation. The Supreme Court record indicates that 25 civil appeals and four criminal appeals were filed in 1993; 38 civil appeals and five criminal appeals were filed in 1994; 38 civil appeals and eight criminal appeals were filed in 1995; 47 civil appeals and nine criminal appeals were filed in 1996; and seven civil appeals and seven criminal appeals were filed in 1997 as of 12 February. The Attorney-General's records also reveal his office's involvement in at least 691 cases during 1996.

81. The Independent Expert was told that while some judges had formal legal training, others were appointed after practical training in the courts or

police. There were some qualified lawyers in Hargeisa. Some qualified at Mogadishu Law School. One senior lawyer qualified in the United Kingdom and another in the Sudan.

82. The material conditions for the court are very basic. The courtroom in Hargeisa is being renovated. The judges, however, lack legal codes and references. Court officials specifically requested that they be provided with legal references. These included references to Indian law such as the Laws of Evidence, the Indian Penal Code and the Code of Civil Procedure, and the laws pertaining to contracts, companies and criminal procedure. Although these laws are still applicable, the court does not possess copies of them.

83. There are threats to judicial independence. The Independent Expert was informed that the Chief Justice had been removed following a case brought before the Supreme Court challenging the criteria regulating the participation in the political process that had led to the selection of Mr. Egal as the head of "Somaliland".

84. Assistance should be given to the Hargeisa judiciary. It is essential that the courts are provided with legal sources, including those in the area of human rights. Judges are keen to receive material, including codes and texts. Training programmes in the area of judicial structures and functioning are also relevant.

## VII. CONCLUSIONS AND RECOMMENDATIONS

85. The Somali people must not be abandoned by the international community. For the most part, it has been civilians who have suffered enormously. Since at least 1969, they lived under a dictatorship the termination of which in 1991 embroiled the country in civil war, extreme violence, grave humanitarian crisis and chaos. International efforts have thus far failed to restore peace and stability. The fragile stability that has been achieved in some regions seems to have come as a result of local initiatives with little help from the international community.

86. It was obvious to the Independent Expert during her mission that the human rights dimension of the conflict in Somalia is ignored and even sometimes undermined. This dimension is particularly essential as various practical programmes to aid Somalia are being developed. The Independent Expert believes that it is precisely in such difficult times that innovative approaches should be developed to assist the population not only in peace-making, relief and rehabilitation, but also in the observance of human rights and humanitarian law. The plight of victims of violations of human rights and humanitarian law should not be overlooked. The Independent Expert believes that the human rights situation in the country should remain under scrutiny and its examination should be strengthened.

87. The Independent Expert believes that there are several opportunities to render useful technical assistance to Somalia in the field of human rights in particular in the area of administration of justice. While the existence of a central government remains essential to securing a durable peace, economic prosperity and full respect for human rights, its absence should not remain a major obstacle. The emerging local reconstruction initiatives and the work of

the non-governmental sector must be encouraged. There is a need for a comprehensive needs assignment in the field of human rights that considers not only this interim situation, but offers some future prospects.

88. The Independent Expert, therefore, recommends that the Commission on Human Rights strengthen the examination of the human rights situation in Somalia. She also recommends that the Commission renew its request to the Independent Expert to assess ways and means of how best to implement a programme of advisory services and technical assistance to Somalia in the field of human rights, including the administration of justice, through, inter alia, the contributions of agencies and programmes of the United Nations in the field as well as of the non-governmental sector.

## Notes

1/ It is beyond the scope of this report to analyse the reasons behind this failure.

2/ The United Nations Consolidated Inter-Agency Appeal for Somalia, October 1996-December 1997. Volume One: Joint Programmes and Projects, December 1996, pp. 9-11. The United Nations entities operating in Somalia include: Food and Agriculture Organization, International Civil Aviation Organization, United Nations Centre for Human Settlements (Habitat), United Nations Development Programme, United Nations Educational, Scientific and Cultural Organization, United Nations High Commissioner for Refugees, United Nations Children's Fund, United Nations Office for Project Services, World Food Programme, World Health Organization. This analysis of the agencies seems to be widely shared by NGOs, academics and human rights activists.

3/ Ibid.

4/ Ibid., p. 10.

5/ Paragraph 70 of the decision of the Appeals Chamber of 2 October 1995 in the Tadic case. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia.

6/ Ibid., para. 9.

7/ International Court of Justice, case concerning military and paramilitary activities in and against Nicaragua, Judgement of 27 June 1986 (merits), para. 218.

8/ Humanity for All: The International Red Cross and Red Crescent Movement, Geneva, Henry Dunant Institute, p. 556.

9/ See, e.g. the report of the Ad Hoc Committee on the Establishment of an International Criminal Court (A/51/22).

10/ Somalia Aid Coordinating Body, Office of the Chairman of the SACB Executive Committee, May 1996.

11/ See Code of Conduct for International Rehabilitation and Development Assistance to Somalia of 8 February 1995 and the Clarification of the Code of Conduct for International Rehabilitation and Development Assistance to Somalia, July 1995. Available at the Documentation Unit of the United Nations Development Office for Somalia (UNDOS), Nairobi.

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